



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA-R05-OAR-2022-0137; FRL-9604-02-R5]

**Air Plan Approval; Illinois; Redesignation of the Illinois
Portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin
Area to Attainment of the 2008 Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Illinois portion of the Chicago-Naperville, IL-IN-WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and is acting in accordance with a January 25, 2022, request from Illinois to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is approving, as a revision to the Illinois State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area. EPA finds adequate and is approving the 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_x) motor vehicle emission budgets (budgets) for transportation conformity purposes for the Illinois portion of the Chicago area. Pursuant to section 110 and part D of the CAA, EPA is approving the VOC reasonably available control technology

(RACT), Enhanced motor vehicle inspection and maintenance (I/M), clean-fuel vehicle programs (CFVP), and the enhanced monitoring of ozone and ozone precursors (EMP) SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA is approving a CAA section 182(f) waiver from NO_x RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2022-0137. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Michael Leslie, Environmental Engineer at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background information

On March 10, 2022 (87 FR 13668), EPA proposed to find that the Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS and to act in accordance with a January 25, 2022, request from Illinois to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the CAA. EPA proposed to approve, as a revision to the Illinois SIP, the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area. EPA proposed to find adequate and approve the 2035 VOC and NO_x motor vehicle emission budgets (budgets) for the Illinois portion of the Chicago area. Pursuant to section 110 and part D of the CAA, EPA proposed to approve the VOC RACT, Enhanced I/M, the CFVP, and the EMP SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA proposed to approve a CAA section 182(f) waiver from NO_x RACT requirements for the Illinois portion of the Chicago area under the 2008

ozone NAAQS. An explanation of CAA requirements, a detailed analysis of how these requirements apply to the Illinois portion of the Chicago area, a discussion of how Illinois has met these requirements, and EPA's reasons for proposing these actions were provided in the notice of proposed rulemaking and will not be restated here.

II. Response to Public Comments

EPA provided a 30-day review and comment period for the March 10, 2022, proposed rule. The comment period ended on April 11, 2022. We received one adverse comment from the Wisconsin Department of Natural Resources (WDNR) on our proposed approval of the CAA section 182(f) waiver from NO_x RACT requirements. The adverse comment is summarized and addressed below.

Comment 1: WDNR requested that EPA not approve the NO_x RACT waiver for the following reasons:

Comment 1a: The commenter states that a NO_x RACT program was required for the three-state Chicago-Naperville 2008 ozone nonattainment area by January 1, 2017, after the area was reclassified to moderate. While Illinois has a NO_x program, it is not federally approved and does not fully meet all NO_x RACT requirements.

Response 1a: CAA section 182(f)(1)(A) provides that a state is not required to implement RACT for major stationary sources of NO_x for nonattainment areas not within an ozone transport region if EPA determines "that additional reductions

of [NO_x] would not contribute to attainment of the [NAAQS] for ozone in the area.” The Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019-2021 period. It is EPA’s longstanding interpretation, as stated in EPA’s January 2005 document, “Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation,” that when an ozone nonattainment area is attaining the ozone standard, as demonstrated by three consecutive years of adequate monitoring data, “it is clear that the section 182(f)(1)(A) language is met since ‘additional reductions of oxides of nitrogen would not contribute to attainment.’ That is, since attainment has already occurred, additional NO_x reductions could not improve the area’s attainment status and, therefore, the NO_x exemption request could be approved.” The NO_x RACT waiver under consideration in this action was submitted by Illinois on January 25, 2022, and is based on CAA section 182(f)(1)(A). This waiver can be approved because the area is attaining the 2008 ozone NAAQS, as demonstrated by the three years of clean monitoring data, and additional NO_x reductions would not improve the area’s attainment status.

Comment 1b: The commenter states that the Chicago nonattainment area continues to struggle to meet Federal ozone standards, such as by failing to meet its August 3, 2021, marginal attainment date for the more stringent 2015 ozone standard. The commenter further states that EPA is overdue in

meeting its statutory obligation to reclassify this area to moderate for the 2015 ozone standard, which was due within 6 months of that attainment date. When the reclassification to moderate under the 2015 ozone standard is finalized, Illinois will be required to submit a NO_x RACT program under the CAA. Given this forthcoming NO_x RACT requirement, the commenter argues EPA's proposed approval to waive an emissions control requirement that will soon be reinstated by statute should not be granted.

Response 1b: In this action, EPA is granting a NO_x RACT waiver only for the 2008 ozone standard based on three years of clean monitoring data for that standard. A CAA section 182(f) NO_x exemption granted for a prior ozone standard (in this case the 2008 ozone standard) does not relieve the area from any CAA section 182(f) NO_x obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). Therefore, potential future reclassification of the Chicago area under the 2015 ozone standard does not prevent EPA from approving the NO_x RACT waiver for the 2008 ozone standard.

Comment 1c: The commenter states that the CAA does not compel EPA to grant this waiver request and that the approval of the NO_x waiver relies on EPA's 2005 guidance, in which EPA cautions that actions relying on the guidance might not be approvable in every situation. The commenter requests that EPA explain how it is appropriate to apply that guidance when the Chicago area remains in nonattainment for ozone and needs

additional NO_x emissions reductions in the area to meet all of the ozone standards.

Response 1c: The Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019-2021 period. In this action, EPA is granting a NO_x RACT waiver only for the 2008 ozone standard because, as per the discussion above regarding the CAA section 182(f)(1)(A) and EPA's January 2005 document, the area qualifies for the NO_x RACT waiver due to the achievement of three years of clean monitoring data. A CAA section 182(f) NO_x exemption granted for the 2008 ozone standard does not relieve the area from any CAA section 182(f) NO_x obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). Therefore, approval of a NO_x RACT waiver only as it applies to the 2008 ozone NAAQS is appropriate.

Comment 1d: The commenter states that EPA's recently released ozone transport modeling for the 2015 standard shows that Illinois significantly contributes to downwind nonattainment at several monitors along Wisconsin's Lake Michigan shoreline. Also, both the Sheboygan and Chicago nonattainment areas will continue to be nonattainment for the 2015 ozone standard in 2032 based on EPA's ozone transport modeling. Given these modeling results, the commenter states that additional, timely reductions in ozone precursor emissions, including NO_x, are needed to ensure attainment of the 2015 ozone standard throughout the region.

Response 1d: The Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019-2021 period. In this action, EPA is finalizing our approval of the NO_x RACT waiver only for the 2008 ozone standard because, as per the discussion above regarding CAA section 182(f)(1)(A), the area is attaining the 2008 ozone NAAQS, as demonstrated by three consecutive years of clean monitoring data, and EPA's modeling indicates that the Illinois portion of the Chicago area will continue to attain the 2008 ozone NAAQS in the future. In this regard, further NO_x reductions will not improve the area's ability to attain the 2008 ozone standard. In contrast, EPA's ozone transport modeling indicates that, barring further emissions reductions, this area will continue to have difficulty attaining or maintaining the 2015 ozone NAAQS in 2024 (the Moderate Area attainment date for the 2015 ozone NAAQS) and beyond. A CAA section 182(f) NO_x exemption granted for the 2008 standard does not relieve the area from any CAA section 182(f) NO_x obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). If finalized, EPA's determination that the Chicago area failed to attain the 2015 ozone NAAQS by the attainment date and accompanying reclassification to Moderate would impose the CAA's NO_x RACT requirements for the 2015 ozone standard.

III. Final Action

EPA finds that the Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS and is acting in accordance with

a January 25, 2022, request from Illinois to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the CAA. EPA is approving, as a revision to the Illinois SIP, the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area.

EPA finds adequate and is approving the 2035 VOC and NO_x motor vehicle emission budgets for use in transportation conformity determinations in the Illinois portion of the Chicago area. Specifically, EPA is finding adequate and approving the budgets for 2035 as proposed (i.e., the last year of the maintenance plan) of 65 tons/day of VOCs and 110 tons/day of NO_x).

Pursuant to section 110 and part D of the CAA, EPA is also approving the VOC RACT, Enhanced I/M, CFVP, and the EMP SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA is approving a CAA section 182(f) waiver from NO_x RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d) (1).

Section 553(d) (1) of the APA provides that final rules shall not become effective until 30 days after publication in the Federal Register "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d) (1) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d) (3) (E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A

redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas

Dated: May 16, 2022.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, E 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.720, the table in paragraph (e) is amended:

i. Under the heading "Attainment and Maintenance Plans" by adding an entry for "Ozone (8-hour, 2008) redesignation and maintenance plan" after the entry "Ozone (8-hour, 2008)

redesignation and maintenance plan" for the St. Louis area; and

ii. Under the heading "Moderate Area & Above Ozone Requirements" by adding entries for "2008 8-hour Ozone Serious Planning Elements" and "2008 8-hour Ozone NO_x RACT Waiver" after the entry "2008 8-hour Ozone Non-CTG RACT Demonstration".

The additions read as follows:

§ 52.720 Identification of plan.

* * * *

(e) * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * *	* *	*		
Attainment and Maintenance Plans				
* * * *	* *	*	*	
Ozone (8-hour, 2008) redesignation and maintenance plan	Chicago Area	1/25/22	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL	

			REGISTER CITATION]	
* * * * *				
Moderate Area & Above Ozone Requirements				
* * * * *				
2008 8-hour Ozone Serious Planning Elements	Chicago Area	1/25/22	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	2035 VOC and NO _x motor vehicle emissions budgets, VOC RACT certification, Enhanced Motor Vehicle Inspection and Maintenance Program certification, clean-fuel vehicle programs certification, enhanced monitoring of ozone and ozone precursors certification
2008 8-hour Ozone NO _x RACT Waiver	Chicago Area	1/25/22	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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PART 81 - DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. Section 81.314 is amended by revising the entry for "Chicago-Naperville, IL-IN-WI" in the table entitled "Illinois-2008 8-Hour Ozone NAAQS [Primary and Secondary]" to read as follows:

§81.314 Illinois.

* * * * *

ILLINOIS—2008 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Chicago-Naperville, IL-IN-WI: ²	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Attainment		Serious.
Cook County				
DuPage County				
Grundy County (part)				
Aux Sable Township				
Goose Lake Township				
Kane County				
Kendall County (part)				
Oswego Township				
Lake County				
McHenry County				
Will County				
* * * * *				

¹This date is July 20, 2012, unless otherwise noted.

²Excludes Indian country located in each area, unless otherwise noted.

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